



particularity” the basis for each and every contention of the State. Such discovery requests are thus overly broad and unduly burdensome. It may be impossible to locate “all” items or “each” item of responsive information to such discovery requests, or at this stage of the case to state “with particularity” each and every basis for each contention. It is improper by interrogatory to require the State to provide a narrative account of its case.

5. The State objects to the submission of contention interrogatories because such interrogatories are premature. Discovery is ongoing. The State requested documents from the Cargill entities on July 10, 2006, and received them only on December 5, 2006. The State has not yet had the time to review and analyze the documents produced. The State is engaged in determining the particular roles, acts and omissions of the Cargill defendants pertinent to the allegations of the First Amended Complaint. The State objects to supplying more than the principal and material facts supporting its allegations at this point. Pursuant to Fed.R.Civ.P. 33(c) full responses to all contention interrogatories should be deferred until discovery is completed.

6. The State objects to the extent that discovery sought is unreasonably cumulative or duplicative.

7. The State objects to these discovery requests to the extent that they do not state with the required degree of specificity and particularity what information is being sought. As such, such discovery requests are vague, indefinite, ambiguous and not susceptible to easily discernible meaning.

8. The State objects to these discovery requests to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties resources, and the importance of the proposed discovery in

resolving the issues.

9. The State objects to these discovery requests to the extent that they improperly attempt to impose obligations on the State other than those imposed or authorized by the Federal Rules of Civil Procedure.

10. The State objects to the definitions of these discovery requests to the extent that they improperly attempt to alter the plain meaning of certain words, and expressly the State objects to the definition of "You" as including any municipality, employee, attorney, agent or other representative of the State.

11. By submitting these responses, the State does not acknowledge that the requested information is necessarily relevant or admissible. The State Expressly reserves the right to object to further discovery into the subject matter of any information provided and to the introduction of such information into evidence. The State also reserves its right to supplement these responses as appropriate or as required by the Federal Rules of Civil Procedure.

Without waiving the foregoing objections, but hereby incorporating each of them by reference in the specific responses as if fully set forth therein, and subject thereto, the State further states and alleges as follows:

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Please identify each tract of real property situated within the Illinois River Watershed currently owned, managed or controlled by the State, formerly owned, managed or controlled by the State, or real property in which the State owns, managed or controls any legal or equitable interest (including but not limited to, ownership in fee, surface ownership, mineral ownership, lease or license). For each tract of real property identified, please provide the full legal description, address, the specific time periods that the State held the stated

interest, and the nature of the interest held by the State.

**RESPONSE TO INTERROGATORY NO. 1:** The State objects to this interrogatory on the grounds that it is overly broad, oppressive, unduly burdensome and expensive to answer, especially to the extent that it asks about each tract of real property owned by the State. Providing answers to such discovery requests would needlessly and improperly burden the State. In addition, this interrogatory is irrelevant, vague and ambiguous.

Subject to and without waiving its general or specific objections, the State has no readily available source of information from which to derive the answer to this Interrogatory. Pursuant to Fed.R.Civ.P. 33(d), the answer to this interrogatory may be found in the land records of the County Clerks of those counties of Oklahoma that include some portion of the IRW and on the websites of various state agencies, such as the Oklahoma Department of Wildlife Conservation. The burden of determining the answer to this interrogatory is substantially the same for Defendant Cargill Turkey, as it is for the State of Oklahoma, and thus the Defendant may search the land records. The pertinent land records are available for inspection and copying during normal business hours of the respective County Clerks' offices.

Subject to and without waiving its general or specific objections, the State refers Defendant to its initial disclosures to Fed. R. Civ. P. 26(a)(1)(A). In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to Defendants in onsite agency productions. In addition, please see the Response to Tyson Foods Interrogatory No. 3 and the response to Cargill Turkey Request For Production No. 17.

The State reserves its right to supplement its answer to this interrogatory pursuant to Fed.

R. Civ. P. 26(e).

**INTERROGATORY NO. 2:** For each specific tract of real property identified in response to the foregoing Interrogatory, please identify the specific uses for and activities that have been conducted on each tract or real property during the period You owned, managed or controlled the interest.

**RESPONSE TO INTERROGATORY NO. 2:** The State objects to this interrogatory on the grounds that it is irrelevant, vague, ambiguous, overly broad, oppressive, unduly burdensome and expensive to answer, especially to the extent that it asks about each tract of real property owned by the State. Providing answers to such discovery requests would needlessly and improperly burden the State. Further, this interrogatory is irrelevant.

Further, without waiving its objections, the State states that the type of properties the State owns includes, but not limited to, universities and associated properties, various State agency offices and associated properties, state parks and associated properties, wildlife management areas, and public access areas. The uses of these properties are typical of universities, state agency office, state parks, wildlife management and public access areas. In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to Defendants in onsite agency productions.

**INTERROGATORY NO. 3:** Please state the date (or year, if an exact date is not known) when You first became aware that poultry industry operations might be a potential source of:

- a. phosphorous / phosphorus compounds;
- b. nitrogen / nitrogen compounds;
- c. arsenic / arsenic compounds;

- d. zinc / zinc compounds;
- e. copper / copper compounds;
- f. hormones; and/or
- g. microbial pathogens

in the Illinois River Watershed and discuss with particularity the facts, witnesses and/or documents leading to Your awareness.

**RESPONSE TO INTERROGATORY NO. 3:** The State objects to this interrogatory on the grounds that it improperly uses the defined term “You.” Moreover, it is overly broad, oppressive, unduly burdensome and expensive to answer, especially to the extent that it asks the exact date or year that the State, a legal entity with more than one hundred component agencies, boards, and commissions and tens of thousands of employees became “aware that poultry industry operations might be a potential source of” phosphorus/phosphorus compounds, nitrogen/nitrogen compounds, arsenic/arsenic compounds, zinc/zinc compounds, copper/copper compounds, hormones, and or microbial pathogens. Further, this interrogatory is irrelevant and not likely to lead to admissible evidence.

Without waving any of the forgoing objections, the State is not able to state the exact year or date when the State first became aware that any of the above listed contaminants came from poultry industry operations. However, the Governor’s Task Force on Animal Waste was formed in 1997 to address issues dealing with pollution from Animal Feeding Operations. Further, the Oklahoma Registered Poultry Feeding Operations Act became effective in 1998 and the State has been negotiating with the Poultry Industry since at least 2001 to reduce the continuing degradation of the IRW from poultry Operations. In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and

whose production is not objected to herein, may be found by a reasonable search within the business records being provided to Defendants in onsite agency productions. Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 4:** Please state that date (or year, if an exact date is not known) when You became aware that elevated levels of the Pollutants or Contaminants alleged in Your Complaint may be the cause of perceived environmental harm (including, but not limited to, impaired use and enjoyment, algae blooms, hypolimnetic anoxia, eutrophication, degradation in water quality and/or sediments, injury to biota, injury to terrestrial, aquatic and sediment species and/or human injury) in the Illinois River Watershed and discuss with particularity the facts, witnesses and/or documents leading to Your awareness.

**RESPONSE TO INTERROGATORY NO. 4:** The State objects to this interrogatory on the grounds that it improperly uses the defined term “You.” Moreover, it is overly broad, oppressive, unduly burdensome and expensive to answer, especially to the extent that it asks the exact date or year that the State became aware that elevated levels of the Pollutants or Contaminants alleged in the Complaint are the cause of environmental harm (including, but not limited to, impaired use and enjoyment, algae blooms, hypolimnetic anoxia, eutrophication, degradation in water quality and/or sediments, injury to biota, injury to terrestrial, aquatic and sediment species and/or human injury). In addition, the State objects to this Interrogatory as calling for its work product and trial preparation materials.

Without waiving any of the forgoing objections the State refers Cargill to the State’s response in Interrogatory No. 3.

In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information

sought in this Interrogatory, and whose production is not objected to herein, may be found by a reasonable search within the business records being provided to Defendants in onsite agency productions.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 5:** Please describe all steps (including, but not limited to establishing water quality standards, negotiations and discussions with potential contributors, legal actions, threatened legal actions, administrative proceedings, threatened administrative proceedings, regulations or agency rule-making) You or the agencies of the State of Oklahoma have taken to address and/or “deal with” other sources of the Pollutants or Contaminants alleged in Your Complaint. See Transcript from March 23, 2006 hearing Pp. 8-10, and in particular P. 9 “That is not to say that there aren’t other sources of problems but the other sources of problems have been addressed and have been dealt with by agencies of government in the State of Oklahoma.”

**RESPONSE TO INTERROGATORY NO. 5:** The State incorporates its general objections set forth herein. The State further objects to this interrogatory on the grounds that it improperly uses the defined term “You,” improperly seeks identification of “every” or “all” items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate “every” or “all” items of responsive information to this interrogatory. In addition, the State objects to this Interrogatory as calling for its work product and trial preparation materials.

Subject to and without waiving any of its general or specific objections, the State has, without limitation: (1) established a comprehensive environmental regulatory system as set out in



27A O.S. 1-3-101, assigning environmental responsibility to the various state environmental agencies; (2) in addition to retaining common law remedies, for each agency provided statutory authority for addressing environmental injuries within its area of jurisdiction (see, e.g., 2 O.S. 1-1 et seq. (Oklahoma Agricultural Code) and 27A 2-1-101 (Oklahoma Environmental Quality Code); and (3) carried into effect such statutory authority through rulemaking, permitting, inspection, and enforcement.

In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found by a reasonable search within the business records being provided to Defendants in onsite agency productions. Potential responsive, non-privileged documents, include permits, notices of violation, administrative orders, complaints, investigative reports, enforcement files, and settlement agreements, if such documents exist in the custody of particular agencies.

**INTERROGATORY NO. 6:** For each step identified in response to Interrogatory No. 5, please state the reduction in each Pollutant or Contaminant that resulted.

**RESPONSE TO INTERROGATORY NO. 6:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further objects to this interrogatory on the grounds that it improperly seeks identification of "every" or "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "every" or "all" items of responsive information to this interrogatory.

Subject to and without waiving any of its general or specific objections, Defendant is referred to the coordinated Watershed Restoration and Protection Strategy for Oklahoma's Impaired Scenic Rivers, 2005 update, (SB 972 report) a copy of which is attached hereto as Exhibit 1, which summarizes some reductions of pollutants or contaminants.

The State has not undertaken to measure the reduction of pollutants and contaminants from each of the measures it has taken. To the extent that a reasonable search of the State's documents reveals documents dealing with reduction of pollutants and contaminants in the IRW, those documents will be made available during agency on site productions now scheduled, or to be scheduled in the future, pursuant to Rule 33(d).

**INTERROGATORY NO. 7:** Please describe the trophic state of each lake or reservoir within the Illinois River Watershed for each season of the year since 1952, and in doing so, state all evidence and identify all documents that relate to any such trophic state, and the cause(s) for any observed eutrophication.

**RESPONSE TO INTERROGATORY NO. 7:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further objects to this interrogatory on the grounds that it improperly seeks identification of "every" or "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "every" or "all" items of responsive information to this interrogatory.

Subject to the foregoing objections, any responsive documents will be made available

during agency on site productions now scheduled, or to be scheduled in the future, pursuant to Rule 33(d). Responsive documents to this request include, but are not limited to, Beneficial Use Monitoring Program (“BUMP”) reports, clean lake studies, and other scientific reports.

**INTERROGATORY NO. 8:** Please identify all “federal approved water quality standards” for public and private water supplies that you state the three scenic rivers in the Illinois River Watershed have failed to meet. See Transcript of March 23, 2006 Hearing, P.9.

**RESPONSE TO INTERROGATORY NO. 8:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter.

Subject to and without waving the foregoing objections, Appendix A of Oklahoma’s Water Quality Standards (OAC 785:45, Appendix A) designates the following Scenic Rivers within the Illinois River basin as having the Public and Private Water Supply beneficial use: Baron Fork from mouth upstream to Highway 59, Upper Illinois River upstream of Barren Fork confluence, and Flint Creek. According to Oklahoma’s 2004 303(d) list, which was approved by EPA in October of this year, the Baron Fork violates water quality standards by failing to meet its Public and Private Water Supply, Primary Body Contact Recreation, and Aesthetic beneficial uses. Further, the Baron Fork is listed as impaired due to violation of the Enterococcus, E. coli, and total fecal coliform water quality standards criteria. The Upper Illinois River (segments OK 121700030010 and OK 121700030350) violates water quality standards by failing to meet its Public and Private Water Supply, Primary Body Contact Recreation, Aesthetic, and Cool Water Aquatic Community beneficial uses. Further, the Upper Illinois River is listed as impaired due

to violation of the Enterococcus, E. coli, total fecal coliform, turbidity, and total phosphorus water quality standards criteria. Flint Creek violates water quality standards by failing to meet its Public and Private Water Supply, Primary Body Contact Recreation, and (in segment OK 121700060010) Aesthetic beneficial uses. Further, Flint Creek is listed as impaired due to violating the Enterococcus, E. coli, total fecal coliform, and total phosphorus water quality standards criteria in segment OK 121700060010; and the Enterococcus and nitrate water quality standards criteria in segment OK 121700060080. Finally, because all are designated as “Scenic River” in OAC 785:45, Appendix A, water quality standards are further violated by these streams failing to meet the Antidegradation Requirements found at OAC 785:45-3.

Further responsive information includes, but not limited too, SB 972 Report, BUMP Reports, 2002 and 2004 Integrated Water Quality Assessment Report, and the Safe Drinking Water Information System. Additionally, responsive documents may be found in the business records of the state which will produced at scheduled and/or yet to be scheduled agency productions pursuant to Fed.R.Civ.P. 33(d).

**INTERROGATORY NO. 9:** State completely and in detail the facts upon which you base the allegations in Your Amended Complaint at ¶ 53 that “[a]t many locations, phosphorus and other hazardous substances, pollutants and contaminants have built up in the soil to such an extent that, even without any additional application of poultry waste to the land, the excess residual phosphorus and other hazardous substances, pollutants and contaminants will continue to run-off and be released into the waters of the IRW in the future” and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 9:** The State incorporates its general objections set forth herein, and the State further objects because it improperly uses the defined term “You.”

Moreover, to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, based on ODAFF inspector soil test results of poultry operations in the summer and fall of 2002 in several counties of Oklahoma in the scenic river watersheds, and an STP threshold of 120 pounds per acre, it was found that 77% of sites tested exceeded an STP (soil test phosphorus level) of 120, and 33% of samples exceeded an STP of 300. See SB 972 report at p. 12-13. Soil nutrient experts at both Oklahoma State University and the University of Arkansas agree that an STP level greater than 65 to 100 is of no value to crops. SB 972 report at p. 3. Once excessive STP levels are achieved, it takes many years of cropping to remove excess phosphorus, during which time soluble and particulate phosphorus can be washed off the site in surface water or may enter ground water.

Confined poultry operations have tons of phosphorus enriched feed brought onto the farm by defendants. Much of that phosphorus passes through the animals and is excreted in manure. Crops most readily respond to nitrogen, so growers have historically applied enough manure to meet crop nitrogen needs, resulting in applying several times the needed amount of phosphorus. Repeated applications of manure based on nitrogen needs causes phosphorus to accumulate in the soil, causing high soil test phosphorus (STP) levels. For land with high STP levels, appreciable amounts of soluble phosphorus can exist in runoff water and can significantly impact water quality in nearby streams and lakes. High levels of STP can require many years of

continuous crop harvesting for removal, with no additional phosphorus from any source during that time. University of Arkansas Cooperative Extension Service, *Soil Phosphorus Levels: Concerns and Recommendations*, Daniels, et. al. p. 2-3, Exhibit 2 hereto.

Once STP levels become excessive, further applications of phosphorus will increase the potential for phosphorus movement and do not provide any potential agronomic benefits. Forages with a high yield potential can be used to remove phosphorus from high phosphorus fields, but it is a slow process. For instance, cutting and removing a Bermuda grass crop of five tons per acre for thirty years would reduce high STP soils by about 100 points. Oklahoma State University Cooperative Extensions Service, *Managing Phosphorus from Animal Manure*, No. F-2249, Zhang, et al., p 3, Exhibit 3 hereto. In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found within the business records being provided to Defendants in onsite agency productions.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 10:** Provide a detailed description of the subjects of discoverable information held by each of the persons listed on Exhibit A of Your Initial Disclosures.

**RESPONSE TO INTERROGATORY NO. 10:** The State objects to this interrogatory on the grounds that it is overly broad, oppressive, unduly burdensome and expensive to answer and subverts the purpose of Rule 26(a) disclosures. The Advisory Committee Notes to the 1993 amendments to the F.R.Civ.P. indicate that the purpose of the disclosures in the State's Exhibit A is to disclose the identity of witnesses who, if their potential testimony were known, might

reasonably be expected to be deposed or called as a witness by any other party. The Notes further state that indicating briefly, as the State has already done, the general topics on which such persons have information should not be burdensome, and will assist other parties in deciding which depositions will actually be needed. While providing the disclosures the State has already made is not too burdensome, providing a “detailed description” of the subjects of their discoverable information is unduly burdensome. The defendants may proceed, as the Advisory Committee Notes indicate, by deposition based upon the disclosures already made.

**INTERROGATORY NO. 11:** Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation contained in Count 9 of Your Amended Complaint that any Cargill entity is subject to Oklahoma Administrative Code, 35:17-3-14.

**RESPONSE TO INTERROGATORY NO. 11:** Cargill’s wrongful poultry waste disposal practices, by and through those practices that occurred in Oklahoma, have caused the runoff of poultry waste resulting in a discharge to the surface and ground waters of the IRW within Oklahoma. Each instance of this conduct, to the extent the poultry waste disposal practice occurred on land owned or leased by the owner of a poultry growing operation subject to Oklahoma Concentrated Animal Feeding Operation Act, 2 Okla. Stat. § 9-200, et. seq., constitutes a violation of the Animal Waste Management Plan criteria set forth in the Oklahoma Administrative Code § 35:17-3-14.

As regards the request for information regarding “each Cargill entity at issue,” the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this



relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response “with particularity” as to each Cargill entity.

However, at the present time, the State does not allege that any Cargill entity is subject to Oklahoma Administrative Code, 35:17-3-14.

**INTERROGATORY NO. 12:** Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation contained in Count 9 of Your Amended Complaint that any Cargill entity violated Oklahoma Administrative Code, 35:17-3-14 and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 12:** Cargill’s wrongful poultry waste disposal practices, by and through those practices that occurred in Oklahoma, have caused the runoff of poultry waste resulting in a discharge to the surface and ground waters of the IRW within Oklahoma. Each instance of this conduct, to the extent the poultry waste disposal practice occurred on land owned or leased by the owner of a poultry growing operation subject to Oklahoma Concentrated Animal Feeding Operation Act, 2 Okla. Stat. § 9-200, et. seq., constitutes a violation of the Animal Waste Management Plan criteria set forth in the Oklahoma Administrative Code § 35:17-3-14.

As regards the request for information regarding “each Cargill entity at issue,” the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an



opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response “with particularity” as to each Cargill entity.

However, at the present time, the State does not allege that any Cargill entity is subject to Oklahoma Administrative Code, 35:17-3-14.

**INTERROGATORY NO. 13:** Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation contained in ¶ 142 of Your Amended Complaint that any Cargill entity has “avoided the costs of properly managing and disposing of their poultry waste – not only to their enormous economic benefit and advantage, but also at great cost to the lands and waters compromising the IRW and at the expense of, and in violation of, the State of Oklahoma’s rights” and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 13:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The legal basis for this paragraph is set forth in the First Amended Complaint. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

As regards the request for information regarding “each Cargill entity at issue,” the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this

relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response “with particularity” as to each Cargill entity.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, the Poultry Integrator Defendants have, at a minimum, avoided the cost of transporting excess poultry litter to locations where it (1) can safely be applied and (2) will not contribute to discharge or runoff of pollutants into the Oklahoma portion of the waters of the IRW. In addition the Defendants have avoided the cost of proper handling and storage of poultry waste within the IRW. Because the Poultry Integrator Defendants have avoided these costs, the Oklahoma portions of the land and waters of the IRW have become polluted as alleged by the State in this case. The State also refers Cargill to the State’s response to Cargill Inc. Interrogatories No. 1-3. In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found by a reasonable search within the business records being provided to Defendants in onsite agency productions.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 14:** Separately for each Cargill entity at issue, state with particularity the factual and legal basis for the allegation contained in ¶ 35 of Your Amended Complaint that “[t]he contracts establishing the growing arrangements between [any Cargill entity] and [its] poultry growers are presented to the poultry growers with no opportunity to negotiate their essential terms, and constitute contracts of adhesion” and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 14:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

As regards the request for information regarding "each Cargill entity at issue," the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response "with particularity" as to each Cargill entity.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, integrated poultry production companies, like the Cargill entities, either raise birds themselves, or under contract arrangements with growers. In those instances in which the integrator contracts with growers, the integrator controls the growing operation, via its contractual relationship and through representatives who make numerous periodic site visits to its respective poultry growers' operations to ensure compliance with its dictates regarding the care and handling of its birds. By its contracts, and grower manuals or other directives, the integrator dictates to the grower, without limitation, the type of buildings, equipment and other facilities to be used in the grower's operation, the feed to

be fed to the birds in the grower's care, any feed supplements to be fed to the birds, the medications and vaccinations to be provided to the birds and the environmental conditions under which the birds are raised. The integrator is intimately involved in and controls each stage of the poultry growing process. Growers have no opportunity to negotiate the essential terms of their contracts, which are thus contracts of adhesion. The State directs Cargill Turkey's attention to Oklahoma Attorney General Opinion, 2001 OK AG 17, which deals with this issue directly. Additionally, the legal basis for this allegation appears in the First Amended Complaint.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 15:** Separately for each Cargill entity at issue, state completely and in detail the facts upon which you base the allegation in Your Amended Complaint ¶ 51 that any Cargill entity "has long known that the application of its poultry waste to lands within the IRW, in the amounts that it is applied and with the frequency that it is applied, far exceeds the capacity of the soils and vegetation to absorb those nutrients present in the poultry waste" and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 15:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

As regards the request for information regarding "each Cargill entity at issue," the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry

operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response “with particularity” as to each Cargill entity.

In addition, the Court in *City of Tulsa v. Tyson, et al.* 258 F.Supp. 2d, 1253, 1296 (N.D. Okl. 2003) found that, “[a]lthough Poultry Defendants cite other sources of phosphorus in the Watershed, they admit in their response brief that they were aware in the 1990s that “phosphorus presented potential problems to the Watershed” and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had “reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.” Cargill was a defendant in the *City of Tulsa* case. In the response brief in question, the *City of Tulsa* defendants, including Cargill, admitted that they became aware of the environmental impact of phosphorus in poultry waste in “approximately the mid-1990s.” Dkt. No. 255, Case No. 4:01-cv-00900-CVE-PJC, attached hereto as Exhibit 4 at ¶ 4, p. 4. No material difference exists between the polluting results of land application of poultry waste in the Eucha-Spavinaw watershed, which was the subject of the *City of Tulsa* case, and that of the IRW. Particularly as regards phosphorus and bacteria, it has long been understood in academic and industry circles that land application of wastes can lead and has led to the environmental harms which are the subject of this suit. See Response to Interrogatory No. 9. In addition, the 1999 Comprehensive Basin Management Plan, at p. 14-15, estimated that, while phosphorus

loading to Lake Tenkiller was approximately equal from point and non-point sources during base flow, annual loading from non-point sources represented 79% of the total phosphorus load to the lake.

In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found by a reasonable search within the business records being provided to Defendants in onsite agency productions

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 16:** Separately for each Cargill entity at issue, state completely and in detail the facts upon which you base the allegation in Your Amended Complaint at ¶ 54 that any Cargill entity “arranged for its respective growers to take possession of the poultry waste coming from its birds...with full knowledge that the growers were annually placing hundreds of thousands of tons of their poultry waste directly on the ground and that these actions would lead to the run off and release of phosphorus and other hazardous substances, pollutants and contaminants into the lands and waters of the IRW” and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 16:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

As regards the request for information regarding “each Cargill entity at issue,” the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response “with particularity” as to each Cargill entity.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, the Poultry Integrator Defendants have for years raised millions of chickens and turkeys, owned by them, in the IRW and have made little or no provision for removal of the waste generated by their birds from the IRW. Poultry waste necessarily follows from the growing of Defendant’s poultry. Disposal of the waste has been arranged for by leaving the waste with growers who land apply it. Representatives of the Poultry Integrator Defendants are routinely in and around the land application sites, and the Defendants are well informed that land application is taking place.

In addition, the Court in *City of Tulsa v. Tyson, et al.* 258 F.Supp. 2d, 1253, 1296 (N.D. Okl. 2003) found that, “[a]lthough Poultry Defendants cite other sources of phosphorus in the Watershed, they admit in their response brief that they were aware in the 1990s that “phosphorus presented potential problems to the Watershed” and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had “reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.”



Cargill was a defendant in the *City of Tulsa* case. No material difference exists between the polluting results of land application of poultry waste in the Eucha-Spavinaw watershed, which was the subject of the *City of Tulsa* case, and that of the IRW. Particularly as regards phosphorus and bacteria, it has long been understood in academic and industry circles that land application of wastes can lead and has led to the environmental harms which are the subject of this suit. In further response to this interrogatory and pursuant to Fed. R. Civ. P. 33(d), information sought in this Interrogatory, and whose production is not objected to herein, may be found by a reasonable search within the business records being provided to Defendants in onsite agency productions.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 17:** Separately for each Cargill entity at issue, state completely and in detail the facts upon which You base the allegation contained in Count 10 of Your Amended Complaint that any Cargill entity was unjustly enriched by the State of Oklahoma and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 17:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State's counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

As regards the request for information regarding "each Cargill entity at issue," the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry



operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response "with particularity" as to each Cargill entity.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, the Poultry Integrator Defendants have owned birds annually generating hundreds of thousands of tons of litter, and, unlike most other industries, unfairly and inequitably have not accepted responsibility for the proper disposal of this waste. Rather than accepting the responsibility, and the cost, of proper waste disposal, the Poultry Integrator Defendants have left the waste from their birds where it falls, with the knowledge that it will be improperly handled and disposed of. This has saved the Poultry Integrator Defendants the cost of proper handling and waste disposal, and has unfairly and inequitably imposed upon Oklahoma the costs and consequences of the Poultry Integrator Defendants' improper handling and waste disposal. Consequently, the State of Oklahoma has conferred a benefit upon the Poultry Integrator Defendants. The State of Oklahoma has not voluntarily conferred the cost savings enjoyed by the Poultry Integrator Defendants. Nevertheless, the Poultry Integrator Defendants have kept the value of their inequitably avoided waste disposal costs, and thus have been unjustly enriched.

Because discovery is ongoing, the State has not determined which witnesses it will use to support its claims referenced in this interrogatory.

**INTERROGATORY NO. 18:** Separately for each Cargill entity at issue, state completely

and in detail the facts upon which You base the allegation contained in ¶¶ 107, 118, 126 of Your Amended Complaint that “Exemplary and punitive damages should...be awarded” against any Cargill entity and identify every witness upon whom You will rely to establish each fact.

**RESPONSE TO INTERROGATORY NO. 18:** The State incorporates its general objections set forth herein, and the State further objects to the extent that this interrogatory seeks facts which are protected by attorney client privilege, work product protection, or which have been prepared in anticipation of litigation or trial by the State’s counsel, expert consultants, or agents, which have not yet been identified as testifying experts in this matter. The State further responds that this interrogatory is unduly burdensome and is a premature contention interrogatory.

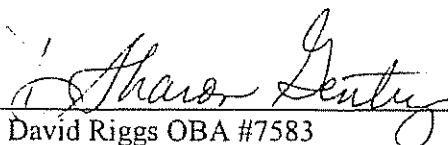
As regards the request for information regarding “each Cargill entity at issue,” the State understands that Cargill created Cargill Turkey in 2004 and transferred some or all of its poultry operations in the IRW to it thereafter. The State does not presently know the exact relationship between Cargill and Cargill Turkey, and is investigating that relationship and the particular activities of each of the Cargill entities. The State requested documents relevant to this relationship on July 10, 2006 and only received them on December 5, 2006, and has not had an opportunity to review and analyze the documents produced. Therefore, it cannot at present state its response “with particularity” as to each Cargill entity.

Subject to and without waiving the foregoing objections, as a general matter, subject to ongoing discovery of the particulars relevant to the Cargill entities, with regard to ¶ 107 and ¶ 118, at a minimum, the improper waste disposal practices of the Poultry Integrator Defendants make a nuisance necessarily follow from the manner of raising poultry heretofore employed by the Defendants, and by their improper waste handling and disposal methods. This conduct amounts to reckless and intentional indifference to the rights and interests of the State of

Oklahoma. The Poultry Integrator Defendants have reason to recognize that, in the ordinary course of doing the work of growing their poultry in the manner heretofore employed, a nuisance is likely to result. The Poultry Integrator Defendants have been aware of the substantial and unnecessary risk of nuisance to the State and that their improper waste disposal practices will cause injury to the State, and did not care that such injury would result. With knowledge that a nuisance would likely result, the Poultry Integrator Defendants have acted unreasonably in the face of the fact that their conduct would cause serious harm to the State of Oklahoma. Similarly, with regard to ¶ 126, at a minimum, the improper waste disposal practices of the Poultry Integrator Defendants make a trespass necessarily follows from the manner of raising poultry heretofore employed by the Defendants, and by their improper waste handling and disposal methods. The Poultry Integrator Defendants have reason to recognize that, in the ordinary course of doing the work of growing their poultry in the manner heretofore employed, a trespass is likely to result. The Poultry Integrator Defendants have been aware of the substantial and unnecessary risk of nuisance to the State and that their improper waste disposal practices will cause injury to the State, and did not care that such injury would result. With knowledge that a nuisance would likely result, the Poultry Integrator Defendants have acted unreasonably in the face of the fact that their conduct would cause serious harm to the State of Oklahoma

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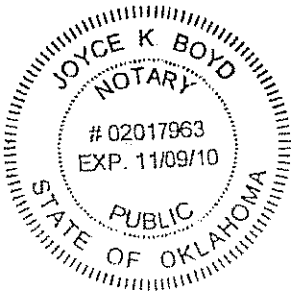
[illegible]

I, Miles Tolbert, being of legal age, hereby depose and state that I have read that foregoing responses to interrogatories and that they are true and correct, to the best of my knowledge and belief, and that I furnish such responses based on consultation with representatives of the State of Oklahoma based on documents identified as of the date of this response.

  
Myles Tolbert  
Secretary of the Environment  
State of Oklahoma

Signed and subscribed to before me on this 11<sup>th</sup> day of December, 2006.

Notary Public



### CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of December, 2006, I electronically transmitted the attached document to the following:

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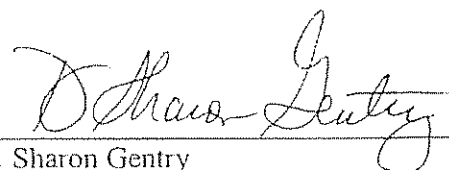
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